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No. 80-1926

In the Supreme Court of the United States

OCTOBER TERM, 1980

JOHN J. BOLEMAN,
PETITIONER,

v.

THE CONGDON AND CARPENTER COMPANY,
RESPONDENT.

On Petition for a Writ of Certiorari To the United States Court of Appeals For the First Circuit

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Question Presented

Respondent respectfully submits that the question presented by Petitioner is misleading. The question presented should read as follows:

> Whether the Court of Appeals erred in holding that the evidence, viewed most favorably to plaintiff, did not warrant a finding that the plaintiff had an oral contract for lifetime employment?

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The respondent in the above-entitled matter submits that the Petition for a Writ of Certiorari (hereinafter "Petition" or "Pet.") should be denied. The Appendices to the Petition (hereinafter "Pet. App.") are incorporated herein by reference.

Opinion Below

The opinion of the Court of Appeals for the First Circuit is set forth in full in the Appendix to the Petition.

Jurisdiction

The Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Constitutional or Statutory Provisions Involved

Respondent disagrees with petitioner's assertion that this case involves an interpretation of the Seventh Amendment.

Respondent respectfully submits that this diversity case involves only the question of sufficiency of evidence to warrant a finding of an oral contract of lifetime employment under state law and presents no question of constitutional or statutory interpretation.

Statement of the Case

The issue in this case is the validity of a discharged employee's claim of an oral contract for lifetime employment.

This claim is based upon state contract law principles involving no questions of constitutional or statutory interpretation.

The Court of Appeals for the First Circuit, in a unanimous decision written by Judge Aldrich, overturned a jury verdict for the plaintiff on the ground that the plaintiff had failed to produce evidence that the alleged contract was made or ratified by a person having the authority to bind the defendant corporation.[1] (Pet. App. 4A, 5A).

The facts, set forth in the opinion of the Court of Appeals (Pet. App. 1A-3A), may be summarized as follows:

In 1974, the plaintiff was discharged from employment as a salesman with the defendant after refusing to relocate from a Worcester, Massachusetts, sales territory to a Rhode Island sales territory.

After he was discharged, the plaintiff claimed that in 1957 he had been orally promised a lifetime job by the defendant's sales manager, Cotter.

Cotter died before trial.

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[1] The Court of Appeals indicated that the alleged contract may also be void for lack of consideration and for failing to constitute a binding offer but did not reach those questions. (Pet. App. 2A, 4A).

The plaintiff introduced no evidence that Cotter had authority even to hire salesmen without the assent of his superiors.

The plaintiff introduced no evidence that any officer of the defendant with authority had ratified a lifetime contract with the plaintiff.

Reasons for Denying the Writ

I. The Plaintiff's Claim of an Oral Contract for Lifetime Employment Is of No Importance to the Public as Distinguished From the Parties to This Case.

This case presents neither legal nor factual issues of interest to the public.

As the Court of Appeals held, the legal principles regarding the validity of a lifetime contract are well settled, requiring "...the strongest proof of authority by the one making it to bind a corporate employer... [T]he cases, without exception, hold that ordinary authority to hire is insufficient to bind a corporate employer to a lifetime obligation." (Pet. App. 4A). It is therefore submitted that this case involves no novel or unsettled legal issue of interest to the public.

The factual issues in this case are clearly of interest only to the parties since they are limited to the private employment relationship between the plaintiff and his former corporate employer. As the Court of Appeals found, this case turns primarily on the plaintiff's failure to introduce evidence that a person with requisite authority made or ratified his alleged oral lifetime contract. The resolution of this factual dispute is patently of no interest to anyone but the parties.

Therefore, in accordance with this Court's recognition of the importance of "...not granting the writ of certiorari except in cases involving principles the setlement of which is of importance to the public as distinguished from that of the parties...",

Layne & Bowler Corporation v. *Western Well Works, Inc.*, 261 U.S. 387, 293, the instant petition for a writ of certiorari should be denied.

II. The Decision of the Court of Appeals That the Evidence Did Not Warrant a Finding Of an Oral Contract for Lifetime Employment Is Clearly Correct.

The Court of Appeals. as stated in its unanimous decision written by Judge Aldrich, applied exactly the standard of review asserted by the petitioner, i.e., "...whether the evidence, viewed most favorably to plaintiff, warranted a finding that he had a contract for lifetime employment." (Pet. App. 1A). It is submitted that the Court of Appeals was correct in holding that the evidence introduced by the plaintiff did not meet this standard.

The decision of the Court of Appeals is fully in accord with a number of Massachusetts cases requiring the strongest proof of authority to bind a corporate employer to an alleged lifetime agreement. (Pet. App. 4A). The plaintiff has failed to cite a single decision from any jurisdiction upholding a lifetime contract upon facts similar to those in this case. The complete lack of precedent in support of the plaintiff's claim reflects the accuracy of the Court of Appeals' finding that the plaintiff failed to introduce evidence that the alleged oral lifetime contract was either made or ratified by a person with requisite authority.

The Court of Appeals found that the deceased sales manager, Cotter, who allegedly made the oral lifetime promise, was not shown to have requisite authority. (Pet. App. 4A). The Court also found that there was no evidence of ratification by any person with authority. (Pet. App. 5A).

In the Petition, no evidence is cited contrary to the finding of insufficient evidence of Cotter's authority. Rather, the Petition cites facts clearly inadequate to establish Cotter's authority, such

as the fact that Cotter "...was a graduate of a law school." (Pet. 3, 4). As to ratification, the Petition contains no reference to any evidence of the authority of the defendant's former officer Bump at the time of his alleged ratification. (Pet. App. 5A). The Petition points to no evidence of knowledge or ratification of a lifetime promise by any other officer, citing such obviously inadequate testimony as the defendant's former president's assistance to the plaintiff in his relocation in 1957. (Pet. 11).

In summary, Petitioner cites no precedent contrary to the Court of Appeals' finding that the facts in this case do not support a lifetime contract, points to no evidence contrary to the Court of Appeals' finding of lack of proof of requisite authority and does not contest the settled principle of requiring the strongest proof of authority for claims of lifetime contracts. It is therefore submitted that the decision of the Court of Appeals should be accepted as correct.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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